1998 Appellate Review of MERC Decisions

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Michigan Supreme Court

Quinn v Police Officers Labor Council, 456 Mich 478 (February 3, 1998), *rev'g* 216 Mich App 237 (1996). In a unanimous decision, the Court reversed the Court of Appeals' disagreement with MERC's conclusion that the POLC had a continuing duty to pursue a grievance it filed before it was decertified and replaced by the Police Officers Association of Michigan (POAM) as exclusive bargaining representative,. Citing *United States Gypsum v United Steelworkers of America,* 384 F2d 38, 44-45 (CA 5, 1967) and *International Union, UAW v Telex Computer Products, Inc,* 816 F2d 519, 522-524 (CA 10,1987), the Court reasoned that decertification does not deprive a union of its right to enforce a collective bargaining agreement, and although decertification may change relations between and among employer, union, and employees, the POLC was in the best position to efficiently and knowledgeably process the grievance to its completion. The Court, in expressing agreement with the Commission, noted that shifting the responsibility from the POLC to the POAM improperly imposed the POLC's judgements, contract interpretations, and financial considerations to the POAM. In a footnote, the Court observed that its opinion does not preclude new representatives from voluntarily pursuing existing grievances provided the grievant consents to the assumption. The Commission's decision is reported at 1994 MERC Lab Op 828.

In *Michigan Education Association* v *Alpena Community College,* 457 Mich 300, (May 19, 1998). In lieu of granting leave to appeal, the Supreme Court reversed the judgment of the Court of Appeals and reinstated the Commission's decision to direct an election among certain non-supervisory support personnel to determine whether they wished to be accreted into a unit of clerical employees. In an unpublished 2-1 per curiam decision, (Docket No. 180695, November 18, 1996), the Court of Appeals decided that the employees sought to be accreted were too diverse to be considered to have a community of interest. In reversing, the Supreme Court noted that generally, Commission decisions regarding residual bargaining units are to be given deference under the competent, material, and substantial evidence standard and gathering up remaining employees into a residual unit will nearly always involve joining employees with diverse job descriptions. It found no sign that the statutory purposes or the goals of collective bargaining would be frustrated by the unit approved by the Commission. The Commission's decision is reported at 1994 MERC Lab Op 955.

St Clair Intermediate School District v *Intermediate Education Association and Michigan Education Association Special Services Association,* 458 Mich 540 (July 31, 1998). The Court affirmed the Court of Appeals' and Commission's conclusions that the Michigan Education Association, the collective bargaining agent for teachers employed by the St Clair Intermediate School District, committed an unfair labor practice by unilaterally implementing a midterm modification of the collective bargaining agreement to increase the lifetime maximum health care benefit through the independent actions of its agent, the Michigan Educations Special Services Association (MESSA). The Court concluded that more than a "mere" agency relationship existed between the MEA and MESSA, a nonprofit corporation whose purpose is provide insurance benefits to its members based

on the following factors: a formal affiliation and common agreement; MESSA's bylaws provided that MEA members had majority control of its board which made the decisionto increase the benefit level; MESSA had substantial imput in the collective bargaining process and was kept involved and informed concerning marketing its products to MEA members; and the MEA disaffiliation policy allowed the MEA to control both MESSA membership and access to MESSA benefits.

In their dissent, Justices Kelly and Cavanagh stated that no agency relationship existed between the MEA and MESSA because the MEA lacked the ability to control MESSA's actions. The Commission's decision is reported at 1993 MERC Lab Op 101 and 1994 MERC Lab Op 1167 (on remand). The Court of Appeals decision appears at 218 Mich App 734 (1996).

Michigan Court of Appeals

Jackson Fire Fighters Association, Local 1306 v City of Jackson, 227 Mich App 520 (January 23, 1998). The Court affirmed MERC's decision that a daily staffing provision in the parties contract did not adversely effect fire fighter safety and was therefore a permissive subject of bargaining which the Union improperly submitted to arbitration. The Court also held that the doctrine of collateral estoppel did not preclude the Commission for adjudicating the daily staffing provision despite the arbitration panel's ruling that the provision constituted a mandatory bargaining subject within its jurisdiction. The Court vacated the panel's award and the Jackson County Circuit Court's injunction which required the Employer to comply with the award. MERC's decision is reported at 1996 MERC Lab Op 125. On June 16, 1998, the Supreme Court has granted the Union's application for leave to appeal (Docket No. 111509-12).

Farmington Education Association v *Farmington Public Schools***,** (Docket No. 198190, February 13, 1998). In an unpublished 2-1 opinion, the Court affirmed the Commission's decision denying a unit clarification petition filed by the Union to accrete adult education teachers into its bargaining unit of K-12 teachers. The Commission agreed with the Union that Alternative Academy teachers shared a community of interest with K-12 teachers but focused on the fact that the recognition clause expressly excluded adult education teachers. The record showed that a contract was in effect when the Alternative Academy teachers first joined the district. However, five months later when the agreement was rescinded and the parties were ordered to renegotiate, the Union made no attempt to include the Alternative Academy teachers into the bargaining unit.

The Court also rejected the Union's argument that the Commission improperly considered a reply brief filed by Respondent. The Commission interpreted Rule 423.463 to mean that although it preferred that a party first obtain permission, a party *may* file a responsive pleading.

The Commission's opinion denying the unit clarification petition and the Union's motion for reconsideration are reported at 1996 MERC Lab Op 77 and 1996 MERC Lab Op 472, respectively.

Organization of School Administrators v *Detroit Board of Education*, 229 Mich App 54 (March 27, 1998). The Employer operated daytime and evening adult education programs and evening adult vocational education programs. In response to over 50% cuts in adult education programs by the legislature, the Employer limited vocational-technical administrators work to twenty-four hours biweekly and changed their method of compensation from per diem to hourly. The Employer decided

that adult education administrators and teachers would not longer be paid overtime for evening work but would receive compensatory time. In dismissing the Union's refusal to bargain charge, the Commission held that it had waived its right to demand bargaining over changes in the hours of work by agreeing to a contract provision which authorized the Employer to set hours when necessary. Regarding the change in the method of compensation issue, the Commission found that a bona fide contract dispute existed over whether the contract was breached and the dispute should be resolved through the contract's grievance procedures.

The Court, in a 2-1 decision, affirmed the Commission's decision that the Employer did not violate its statutory duty to bargain by unilaterally limiting the work hours for the vocational-technical administrators. However, the Commission was directed to provide a clear explanation why do unfair labor practice was committed regarding the Employer's decision to change the vocational-technical administrators' method of compensation from per diem to hourly. The Court also held that the Employer did not unilaterally implement a change in the rate of pay for adult education department heads and teachers, but vacated the Commission's determination that their evening work was not overtime which the Employer could modify without bargaining.

The Commission's decisions are reported at 1996 MERC Lab Op 30 and 1996 MERC Lab Op 207 (on motion for reconsideration).